

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

03-CR-6142L

v.

JOHN CRUZ,

Defendant.

The Court referred all pretrial motions in this criminal action to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Defendant, John Cruz (“Cruz”), filed a motion to dismiss the indictment on the grounds that the United States Marshal Services’ practice of requiring photographic identification of all visitors to the courthouse violated Cruz’s constitutional right to a public trial. Magistrate Judge Feldman issued a Report and Recommendation on October 21, 2005 recommending that Cruz’s motion be denied. Cruz eventually filed objections to Magistrate Judge Feldman’s Report and Recommendation on December 21, 2005.

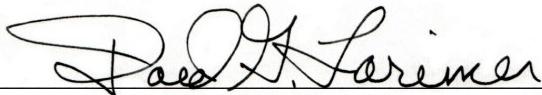
This same issue was presented by the same attorney in another case in the Western District of New York, and the United States Court of Appeals for the Second Circuit recently decided that matter and found no constitutional violation. *See United States v. Smith*, 426 F.3d 567 (2d Cir.

2005). Magistrate Judge Feldman relied on the *Smith* case and found it to be controlling. I agree with Magistrate Judge Feldman that the issue presented and resolved in the *Smith* case is precisely the issue now pending here. I see no material distinction whatsoever and, therefore, for the reasons set forth in Magistrate Judge Feldman's Report and Recommendation and based on authority of the *Smith* case. I adopt the Report and Recommendation of Magistrate Judge Feldman and deny defendant Cruz's motion to dismiss the indictment.

CONCLUSION

Defendant John Cruz's motion to dismiss the indictment (Dkt. #239) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 4, 2006.